

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-70-C - ORDER NO. 2006-369
JUNE 9, 2006

| | |
|---|----------------------|
| IN RE: Application of LMDS Holdings, Inc. for a |) ORDER |
| Certificate of Public Convenience and |) GRANTING |
| Necessity to Provide Competitive Local |) CERTIFICATE, |
| Exchange and Interexchange |) APPROVING MODIFIED |
| Telecommunications in the State of South |) ALTERNATIVE |
| Carolina and for Alternative Regulation, and |) REGULATION AND |
| for Flexible Regulation. |) FLEXIBLE |
| |) REGULATION AND |
| |) APPROVING NAME |
| |) CHANGE TO NEXTLINK |
| |) WIRELESS, INC. |

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of LMDS Holdings, Inc. ("LMDS" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide competitive local exchange and interexchange telecommunications services within the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2005) and the rules and regulations of the Commission. By its Application, LMDS also requests modified alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C as modified by Order No. 2001-997, flexible regulation of its local exchange service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C, and waiver of certain Commission regulations.

The Commission's Docketing Department instructed LMDS to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of LMDS and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. LMDS complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the South Carolina Telephone Coalition (SCTC). Subsequent to the intervention, LMDS and SCTC reached a Stipulation, attached hereto as Order Exhibit 1.

On Friday, May 5, 2006, LMDS and ORS filed a stipulation, which is attached hereto as Order Exhibit 2. A hearing was convened on May 8, 2006, at 11:30 a.m. in the Commission's Meeting Room, Columbia, South Carolina, before David Butler, Hearing Examiner. LMDS was represented by John J. Pringle, Jr., Esquire. The Office of Regulatory Staff (ORS) was represented by Shannon Bowyer Hudson, Esquire.

David LaFrance, Senior Manager of Regulatory and External Affairs for the Company, appeared by video conferencing and testified in support of the Application. The record reveals that LMDS, a subsidiary of XO Holdings, Inc., is incorporated in Delaware and has registered to transact business in South Carolina as a foreign corporation. After filing its Application, the Company changed its name in Delaware to NextLink Wireless, Inc. (NextLink), and, at the time of the hearing, was in the process of changing its name in the states in which it is certificated and is seeking certification. (The Company has now furnished the requisite Certificate from the South Carolina Secretary

of State, which shows that the Company name has now officially been changed to NextLink Wireless, Inc. in the records of the State of South Carolina.) Mr. LaFrance requests that any authority granted by this Commission be issued in the name of NextLink Wireless, Inc. Further, according to Mr. LaFrance, the Company seeks authority to operate as a reseller of dedicated point-to-point transport and data services to enterprise customers and other common carriers throughout the state under its new name. Mr. LaFrance explained the Company's request for authority, and the record further reveals the Company's services, operations, and marketing procedures. The Company's primary market is business customers.

Mr. LaFrance also discussed LMDS' technical, financial, and managerial resources to provide the services for which it seeks authority. Mr. LaFrance offered that LMDS possesses sufficient financial resources to support its operations in South Carolina. With regard to management and technical capabilities, the Company has not been denied a license in any of the states in which it has applied, nor has it had a license revoked in any jurisdiction. The Company's Application and Mr. LaFrance's testimony are both evidence that LMDS' management team has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. LaFrance also testified that LMDS will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Mr. LaFrance offered that approval of LMDS' Application would serve the public interest by increasing the level of competition in South Carolina. Mr. LaFrance, on behalf of the Company, requests a waiver of 26 S.C. Code Ann. Regs.103-610 and to be

allowed to keep the Company's books at its headquarters in Virginia. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts (USOA). LMDS maintains its books in accordance with Generally Accepted Accounting Principles (GAAP). In addition, the Company requests that it not be required to publish local exchange directories, and therefore requests waiver of 26 S.C. Code Ann. Regs. 103-631. Further, LMDS asks that it not be required to create and file operating area maps as required by 26 S.C. Code Ann. Regs. 103-612.2.3, and therefore requests waiver of this Regulation.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. LMDS is incorporated under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State. The Company has changed its name to NextLink Wireless, Inc. in Delaware, and at the time of the hearing before the Hearing Examiner, was changing its name in the various states in which it has authority and is seeking authority. The Company is requesting that any authority that this Commission grants the Company be granted in the name of NextLink Wireless, Inc.

2. LMDS has no reported record of violations of regulatory laws or regulations in the jurisdictions in which it is currently operating.

3. LMDS desires to operate as a provider of competitive local and interexchange exchange telecommunications services in South Carolina.

4. We find that LMDS possesses the managerial experience and capability to operate as a provider, through facilities-based or resale, of interexchange and local exchange services in South Carolina.

5. We find, based on the financial statements submitted by the Company, that LMDS possesses sufficient financial resources to provide the services as described in its Application.

6. We find that the issuance of a Certificate of Public Convenience and Necessity to LMDS (in the name of NextLink Wireless, Inc.) to operate as a facilities-based and/or reseller of interexchange and local exchange telecommunications services in South Carolina would be in the best interest of the citizens of South Carolina by increasing the level of competition in South Carolina, by providing an alternative source for telecommunications services, and by creating incentives for lower prices, more innovative services, and more responsive customer service.

7. LMDS has no current plans to maintain offices in South Carolina and requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds LMDS' requested waiver reasonable and understands the difficulty presented to LMDS should the waiver not be granted. Further, we find that a waiver of 26 S.C. Code Ann. Regs. 103-610 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable.

Additionally we find that waivers of 26 S.C. Code Ann. Regs. 103-631 and 103-612.2.3 are reasonable and in the public interest.

8. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B) (1) (Supp. 2005).

9. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B) (3) (Supp. 2005).

10. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B) (4) (Supp. 2005).

11. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B) (2) (Supp. 2005).

12. The Commission finds that the provision of local exchange service by the Company "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280 (B) (5) (Supp. 2005).

13. Following execution of a Stipulation with intervenor South Carolina Telephone Coalition (SCTC), the SCTC withdrew its opposition to the Application.

CONCLUSIONS OF LAW

1. The Commission concludes that LMDS possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.
2. The Commission concludes that LMDS will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.
3. The Commission concludes that LMDS will provide services which will meet the service standards of the Commission.
4. The Commission concludes that approval of LMDS' Application to provide intrastate telecommunications services within South Carolina will serve the public interest by enhancing competition in the State of South Carolina by offering additional service offerings to South Carolina's consumers and by providing for efficient use of existing telecommunications resources.
5. The Commission concludes that the provision of telecommunications service by LMDS will not adversely impact the public interest.
6. The Commission concludes that the issuance of the authority to provide intrastate local exchange and interexchange telecommunications services as requested by LMDS and as set forth in its Application, is in the best interests of the citizens of the State of South Carolina.
7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to LMDS (in the name of NextLink Wireless, Inc.) to

provide facilities-based and resold intrastate interexchange and local exchange telecommunications services.

8. The Commission adopts a rate design for LMDS for its residential interexchange services which includes maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. LMDS shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. LMDS shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp.2005).

10. The Commission concludes that LMDS' intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

11. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

12. We conclude that LMDS' request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted as strict compliance with the regulation would cause undue hardship on LMDS. We also grant exemption from the policies requiring the use of USOA. In addition, we grant waivers of 26 S.C. Code Ann. Regs. 103-631 and 103-612.2.3, which require publication of a local telephone directory and area operating maps, respectively.

13. The Stipulations between the parties should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to LMDS (in the name of NextLink Wireless, Inc.) to provide intrastate interLATA service

and to originate and terminate toll traffic within the same LATA, as set forth herein, on a facilities basis, and/or through resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission, as well as to provide facilities-based and/or resold local exchange telecommunications services within the State of South Carolina. (The Company does not intend to offer prepaid debit card services in South Carolina at this time. Mr. LaFrance stated in his testimony that the Company is aware of this Commission's \$5,000 bond or certificate of deposit requirement associated with prepaid debit card services, and will file such an instrument with the Commission, should the Company decide to offer these services.)

2. The Company's rate designs for its products shall comport to those designs described in Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, LMDS shall file its revised tariff and an accompanying price list for any applicable rates within thirty (30) days of receipt of this Order, in the name of NextLink Wireless, Inc. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations, as well as the provisions of the LMDS-ORS Stipulation.

4. LMDS is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. LMDS shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If LMDS changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, LMDS shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, LMDS shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. LMDS shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, LMDS shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.sc.gov/reference/forms.asp. or at the ORS's website at

www.regulatorystaff.sc.gov. The title of this form is “Telecommunications Company Annual Report.” This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31st** of each year. The proper form for filing gross receipts information can be found at the ORS website at www.regulatorystaff.sc.gov, and the appropriate form is entitled “Gross Receipts Form.”

Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund (USF) worksheet, which may be found on the ORS’s website at www.regulatorystaff.sc.gov. This worksheet provides ORS information required to determine each telecommunications company’s liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **August 15th** with the Commission and ORS.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. LMDS shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at

www.psc.sc.gov/reference/forms.asp; this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

10. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

11. At the hearing, LMDS requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2005), which requires that records required by the Commission's Rules and Regulations be maintained in South Carolina. The record reveals that LMDS's principal headquarters will be located outside of South Carolina. LMDS requests permission to maintain its books and records at its headquarters in its home office. The Commission finds LMDS's requested waiver reasonable and understands the difficulty presented to LMDS should the waiver not be granted. The Commission therefore grants the requested waiver that LMDS be allowed to maintain its books and records at its principal headquarters. However, LMDS shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and LMDS shall promptly notify the Commission and ORS if the location of its books and records changes.

12. LMDS also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, LMDS maintains its book of accounts in accordance with Generally

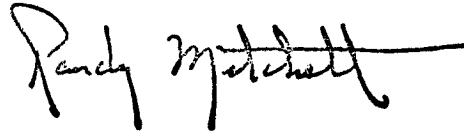
Accepted Accounting Principles (GAAP). GAAP is used extensively by interexchange carriers and other providers. Accordingly, LMDS requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above. We also grant the waivers of the additional regulations as found above.

13. Should the Company become interconnected to the public switched telephone network, LMDS is required to comply with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911" system or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs LMDS to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating, should the Company become interconnected to the public switched telephone network. Contact with the appropriate 911 service authorities is to be made before beginning local telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office of the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing local telephone services in South Carolina, LMDS shall contact the 911 coordinator in each county (and city where the city has its own 911 system) and shall provide information regarding the Company's operations as required by the 911 system.

14. The Stipulations between the various parties are hereby approved.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "Randy Mitchell", with a long horizontal stroke extending to the right.

Randy Mitchell, Chairman

ATTEST:

A handwritten signature in black ink, appearing to read "G. O'Neal Hamilton", with a long horizontal stroke extending to the right.

G. O'Neal Hamilton, Vice-Chairman

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2006-70-C

Re: Application of LMDS Holdings, Inc. for)
Authority to Provide Competitive Local Exchange)
and Interexchange Telecommunications Services)
in the State of South Carolina, Alternative)
Regulation, and for Flexible Regulation)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and LMDS Holding, Inc. ("LMDS") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose LMDS's Application. SCTC and LMDS stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to LMDS, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. LMDS stipulates and agrees that any Certificate which may be granted will authorize LMDS to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. LMDS stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.
4. LMDS stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and

until LMDS provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, LMDS acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. LMDS stipulates and agrees that, if LMDS gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then LMDS will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. LMDS acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and LMDS, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

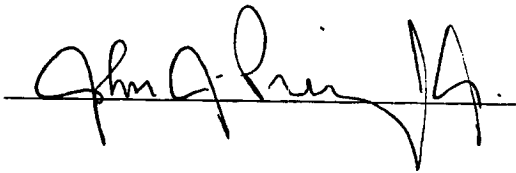
8. LMDS agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone

service at affordable rates.

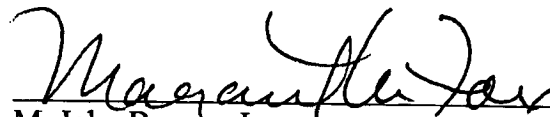
9. LMDS hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 27th day of April,
2006.

LMDS Holdings, Inc.



South Carolina Telephone Coalition:



M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

**South Carolina Telephone Coalition Member Companies
for Purposes of Local Service Stipulation**

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2006-70-C

May 5, 2006

IN RE:

Application of LMDS Holdings, Inc.)
for a Certificate of Public Convenience)
and Necessity to Provide Competitive)
Local Exchange and Interexchange)
Telecommunications in the State of)
South Carolina and for Alternative)
Regulation, and for Flexible Regulation)

STIPULATION

This Stipulation ("Stipulation") is made by and among the Office of Regulatory Staff ("ORS") and LMDS Holdings, Inc., ("LMDS" or "the Company") (collectively referred to as the "Parties" or sometimes individually as "Party").

WHEREAS, on March 2, 2006, the Company filed its application requesting, among other things, a Certificate of Public Convenience and Necessity to provide within the state of South Carolina competitive local exchange and interexchange telecommunications services, flexible regulation for its local exchange services pursuant to Order No. 98-165 in Docket No. 97-467-C, and alternative regulation for its interexchange services pursuant to South Carolina Code § 58-9-585 (Supp.1999) as was first granted by the Commission in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, and as modified by Order No. 2001-997 in Docket No. 2000-407-C;

WHEREAS, LMDS specifically intends to focus on deploying technology to provide a core set of point-to-point transport and data services tailored to meet specific

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needs of carriers, particularly the needs of commercial mobile radio service ("CMRS") providers, enterprise business customers and common carriers with high capacity point-to-point digital data communication needs. The circuit and transmission equipment LMDS has selected for deployment includes ports for both traditional time division multiplexed ("TDM") circuits as well as Internet Protocol ("IP") ports for Ethernet services. LMDS will provide its data-only broadband managed network solutions primarily through a combination of traditional wireline elements and its FCC-licensed, Local Multipoint Distribution Service ("LMDS") spectrum. The Company will provide high-capacity access alternatives to the exclusive use of existing copper and fiber optic based telecommunications services. These services will include point-to-point connectivity at speeds ranging from T1 through OC-3 levels. The Company's primary services will include Ethernet service using 10Mbps and 100Mbps interfaces and dedicated high speed Internet access. The equipment LMDS has selected for deployment includes ports for both traditional time division multiplexed ("TDM") circuits as well as Internet protocol ports for Ethernet services.

WHEREAS, at a later date, LMDS may expand its service offerings to include a broader range of products and services and, therefore, requests the Commission to certify LMDS to provide a full range of local and interexchange services.

WHEREAS, on March 8, 2006, the Public Service Commission of South Carolina (the "Commission") issued a Notice of Filing and Hearing and set a return date of April 10, 2006;

WHEREAS, the hearing in the above captioned matter is scheduled to be heard before a Hearing Examiner on May 8, 2006;

WHEREAS, the South Carolina Telephone Coalition ("SCTC") filed a Petition to Intervene in this matter dated April 10, 2006;

WHEREAS, on April 27, 2006 a stipulation between SCTC and LMDS was filed with the Commission;

WHEREAS, on April 13, 2006, LMDS filed the direct testimony of David LaFrance with the Commission;

WHEREAS, the purpose of this proceeding is to review the application filed by the Company and its request for a Certificate of Public Convenience and Necessity;

WHEREAS, since the filing of the notice, ORS has conducted a review of the technical, managerial, and financial expertise of the Company to provide such services;

WHEREAS, ORS has reviewed the application and the financial data provided by the Company, and ORS has calculated certain performance ratios based upon information provided by the Company;

WHEREAS, ORS has investigated the services to be offered by the Company and its intended customer service plans;

WHEREAS, ORS has reviewed the proposed tariffs submitted by the Company;

WHEREAS, as a result of its investigations, ORS has determined a) the Company intends to offer facilities-based and resold local exchange and interexchange telecommunications services; b) the Company does not intend to offer prepaid calling cards; c) the officers of the Company possess sufficient technical and managerial abilities to adequately provide the services applied for; d) the Company asserts it will have access to adequate funds for its operations through its parent company, XO Holdings, Inc.; e) certain revisions should be made to the Company's proposed tariffs in order to comply

with Commission statutes and regulations; f) the services provided by the Company will meet the service standards required by the Commission; g) the provision of local services by the Company will not adversely impact the availability of affordable local exchange service; h) to the extent it is required to do so by the Commission, the Company will participate in the support of universally available telephone service at affordable rates; i) the provision of local and interexchange services by the Company will not adversely impact the public interest; and j) the Company's services are not interconnected to the public switched telephone network, but in the event the lines are to be interconnected, the Company agrees it will initiate negotiations with one or more of the incumbent local exchange carriers for interconnection or for commercial agreements applicable to services to be provided in South Carolina.

WHEREAS, to ensure compliance with the Commission's statutes and regulations, the Parties have agreed to the following comprehensive settlement of all issues in this docket.

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

- 1) The Parties agree to stipulate into the record before the Commission this Stipulation. The Parties also agree to stipulate to the pre-filed testimony of LMDS Witness David LaFrance who will be presented without cross-examination by ORS;
- 2) LMDS agrees to submit into the record before the Commission revised tariffs in accordance with ORS recommendations and to file those tariffs with both the Commission and ORS;

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- 3) The Parties agree that the Company should be granted a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange and interexchange telecommunications services within the State of South Carolina;
- 4) ORS does not oppose the Company's request for waiver of 26 S.C. Code Ann. Regs. 103-610 (location of books and records) as the Company has set forth in Mr. LaFrance's testimony that, upon request, it will provide to the Commission and ORS expeditious access to its books and records at its expense, 103-631 (publication of directories), and any Commission rules or policies requiring a carrier to maintain its financial records in conformance with the Uniform System of Accounts ("USOA"), and the Parties agree to the reasonableness of a waiver of 26 S.C. Code Ann. Regs. 612.2.3 (Operating Area Maps);
- 5) ORS does not oppose the Company's request that the Commission allow it to employ a flexible local exchange rate structure as described in its application and as first authorized by the Commission in Order No. 98-165 in Docket No. 97-467-C; ORS does not oppose the Company's request that its interexchange services be subject to alternative regulation, pursuant to South Carolina Code § 58-9-585 (Supp.1999), as was first granted by the Commission in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, and as modified by Order No. 2001-997 in Docket No. 2000-407-C;
- 6) Should LMDS offer prepaid debit card services in South Carolina, it will comply with the Commission's \$5,000 bond or certificate of deposit requirement associated with prepaid debit card services, and will file such an instrument with the Commission at that time.

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- 7) LMDS agrees to resell the services of only those interexchange carriers or local exchange carriers authorized to do business in South Carolina by the Commission;
- 8) When appropriate and upon request, the Company agrees to engage in good faith negotiations with non-BellSouth incumbent local exchange carriers whose networks interconnect with BellSouth at the same local tandem regarding traffic exchange;
- 9) LMDS agrees that the Company will allow an end-user of resold services to access an alternative interexchange carrier or operator service provider if the end-user expresses such a desire;
- 10) The Company agrees to file necessary financial information with the Commission and ORS for universal service fund reporting, annual reporting and/or gross receipts reporting and remit fees as applicable and appropriate;
- 11) The Company agrees to comply with South Carolina Code Section § 58-9-300 entitled "Abandonment of Service." Additionally, the Company agrees to adhere to the Federal Communication Commission rules 47 C.F.R. §§ 64.1190 and 64.1130 regarding preferred carrier freezes and the requirement that the form of the written authorization for the institution of the freeze be a separate or easily separable document. Prior to abandonment of service, the Company shall remove any preferred carrier freeze so as to enable consumers to seamlessly transfer their telephone numbers to another provider;
- 12) Should the Company become interconnected to the public switched telephone network, the Company agrees to comply with Title 23, Chapter 47 of the South

Carolina Code Annotated, which governs the establishment and implementation of a "Public Safety Communications Center" also known as "911 service." At that time, the Company agrees to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating prior to initiating local service in South Carolina and shall provide the 911 coordinator in each county and/or city with information regarding the Company's operations. Attached as Exhibit 1 to this Stipulation is a memorandum from the State 911 Office which provides contact information for the County 911 Coordinators;

13) ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10(B) (added by Act 175). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:
(1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
(2) economic development and job attraction and retention in South Carolina; and
(3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Stipulation reached among the Parties serves the public interest as defined above;

14) The Parties agree to advocate that the Commission accept and approve this Stipulation in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and to take no action inconsistent with its adoption by the Commission. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Stipulation be accepted and approved by the

Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Stipulation and the terms and conditions contained herein;

15) The Parties agree that signing this Stipulation will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Stipulation in its entirety, then any Party desiring to do so may withdraw from the Stipulation in its entirety without penalty or obligation;

16) This Stipulation shall be interpreted according to South Carolina law;

17) The above terms and conditions fully represent the Stipulation of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Stipulation by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and electronic signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Stipulation. The Parties agree that in the event any Party should fail to indicate its consent to this Stipulation and the terms contained herein, then this Stipulation shall be null and void and will not be binding on any Party.

[SIGNATURE PAGE FOLLOWS]

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WE AGREE:

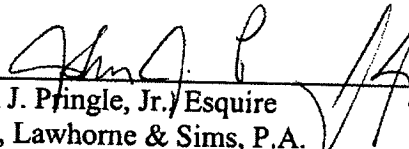
Representing the South Carolina Office of Regulatory Staff

Shannon Bowyer Hudson

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WE AGREE:

Representing LMDS Holdings, Inc.



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June 9, 2006

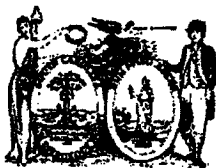
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Bobby Bowers
DIRECTOR

August 2, 2004

To: Telephone Companies New to South Carolina

In an effort to continue providing quality emergency services to the citizens of South Carolina, the State 911 Office requests that before beginning telephone services in a county, you contact the 911 Coordinator in that county. This will allow both parties to obtain important information about providing 911 services in that county. If you have already begun services, then contact the coordinator as soon as possible.

A list of County 911 Coordinators can be found on the South Carolina E911 homepage at www.ors.state.sc.us/digital/E-911/ASP. If you have any questions related to 911 in South Carolina, you may contact E911 Coordinations at the Office of Research and Statistics at 803-734-3883. The person responsible for this can also be found on the 911 homepage. Please be aware that some cities may have their own E911 systems, these are also listed on the 911 homepage. These city coordinators will need to be contacted in addition to the county coordinators.

EXHIBIT 1

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